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Secrets of the C.I.A.

By Anthony Lewis

BOSTON, March 8—As Director of Central Intelligence, William E. Colby put great emphasis on the need to protect intelligence secrets. He helped develop a legal strategy for secrecy, and he repeatedly asked Congress for a law to restrain leakers.

So it is news when Mr. Colby changes his approach. The other day, in little-noticed testimony before a Senate Intelligence subcommittee, he made a careful new proposal to balance the interests of security and freedom. His thoughts should be helpful to Carter Administration officials, who are struggling right now with the old problem of how to keep some secrets in our open society.

Mr. Colby proposed legislation to protect "secret intelligence sources and techniques." His basic idea was to define those secrets narrowly, and apply the statute only to people who had specifically promised to keep them secret. Such a carfully aimed law would be both more credible as a threat and less worrying to civil libertarians, he argued, than broad laws against leaks.

"We all know," he testified, "that the total secrecy which characterized intelligence in the past included many unnecessary secrets, and that some of these covered activity improper at the time. . . . We must give a signal . . . that America will not try to keep the unnecessary secrets but that it does have the will and the machinery to keep the necessary ones."

In the past, Mr. Colby has urged legislation to let the Government go to court and get injunctions against any prospective leaks of classified intelligence information. He was also involved in developing the legal theory that secrecy agreements signed by C.I.A. employees are legally enforceable contracts—the theory recently invoked by the Justice Department to seek damages from Frank Snepp for publishing his book on Vietnam without agency clearance.

Those ideas Mr. Colby now disavows. He told the Senate committee that the Government should not "turn frantically to attempts to enforce contracts or obtain damages." And he indicated that the constitutional presumption against prior restraints, spelled out by the Supreme Court, made injunctions a doubtful remedy.

Instead, Mr. Colby urged a narrow criminal statute. It would cover only intelligence sources and techniques "vulnerable to termination or frustration by a foreign power if disclosed." And it would apply only to personnel who had signed secrecy agreements.

President Ford, on Feb. 18, 1976, proposed legislation to protect intelligence sources and methods by either injunction or prosecution. It never got anywhere in Congress. Mr. Colby's proposal has the same object but may be more attractive because it differs significantly in method.

1. The type of secrets to de protected would be strictly defined, and courts would hold *in camera* hearings to decide whether the material in a case met the definition. These would be adversary proceedings, with counsel fo rthe defendant participating.

2. Journalists or other third parties who had the information could not be prosecuted and would be protected from having to disclose, under subpoena, where they got it.

3. The statute would be the exclusive way to proceed against disclosure of intelligence sources and techniques. It would bar injunction or damage suits on a "contract" or other basis. It would also end any obligation to submit manuscripts for clearance, but if an ex-employee submitted one voluntary and it was cleared, he could not be prosecuted.

Mr. Colby, who now practices law in Washington, was asked why he had turned against the contract theory. He said: "It really isn't very dignified—using contract law to protect secrets." He made clear he thought it was ineffectual, because publishers got around it.

An approach like Mr. Colby's could have political as well as legal advantages. For those concerned about security, it offers greater certainty in protecting real intelligence secrets. For civil libertarians it offers an end to the chilling effects of prior restraints in this area, enforced by judges with no guidelines on what is a secret.

The proposal could also help President Carter get out of what seems to be some embarrassment over the suit against Frank Snepp. Asked about the case last week, Mr. Carter referred testily to the dangers of intelligence people "revealing our nation's utmost secrets." But there is no claim that Mr. Snepp's book reveals any secret intelligence sources or methods, and the suit would not lay down any standards of secrecy, only Congress can really do that.

The dilemma is always how to safeguard genuine secrets—the names of agents, for example—while not preventing the disclosure of abuses that we know have occurred in intelligence agencies. Mr. Colby's proposal would not accomplish the total reform of our espionage laws that experts think is needed. But it would deal precisely and persuasively with what most think is the immediate problem.

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